No. 1085.

In the Supreme Court of the United States

OCTOBER TERM, 1944

FOREST E. LEVERS, ADMINISTRATOR, ETC.,
PETITIONER,

v.

A. V. ANDERSON, DISTRICT SUPERVISOR, ALCOHOL TAX UNIT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 457–458) is reported in 147 F. 2d 547.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on January 23, 1945 (R. 459). A petition for rehearing and modification of judgment (R. 459–460) was denied on February 23, 1945 (R. 460–461). The petition for writ of

certiorari was filed in this court on March 27, 1945. The jurisdiction of this court is invoked under Section 4 (h) of the Federal Alcohol Administration Act (c. 814, 49 Stat. 977) and Section 240 of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether an application for reconsideration provided for by administrative regulation is a condition precedent to judicial review, under Section 4 (h) of the Federal Alcohol Administration Act, of orders entered under Sections 4 (b) and 4 (e) of that Act.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Federal Alcohol Administration Act, 49 Stat. 977, 27 U. S. C. 201, and of the applicable regulations are printed in the appendix hereto, *infra*, pp. 16–23.

Reorganization Plan No. III (54 Stat. 1231), prepared pursuant to the Reorganization Act of 1939 (53 Stat. 561), which became effective June 30, 1940, by Joint Resolution of June 4, 1940 (54 Stat. 230, 231), provided that the functions of the Administrator under the Federal Alcohol Administration Act "shall be administered under the direction and supervision of the Secretary of the Treasury through the Bureau of Internal Revenue in the Department of the Treasury." The Secre-

tary of the Treasury delegated the functions of the Administrator "to the Deputy Commissioner of the Bureau of Internal Revenue in charge of the Alcohol Tax Unit, to be exercised by him under the direction and supervision of the Commissioner of Internal Revenue and the Secretary of the Treasury." (Treasury Department Order No. 30, 5 Fed. Reg. 2212). Subsequently these same powers were also delegated to the District Supervisors of the Alcohol Tax Unit, to be exercised by them subject to the supervision and direction of the Deputy Commissioner (Treasury Decision 4982, 5 Fed. Reg. 2549).

STATEMENT

Pursuant to the provisions of the Federal Alcohol Administration Act, Forest E. Levers and Ray E. Levers, d/b/a Levers Brothers, applied for and, on March 21, 1936, were issued a wholesaler's basic permit (R. 153). On October 1, 1941, Ray E. Levers died (R. 154). On October 6, 1941, the Probate Court of Chaves County, New Mexico, appointed Forest E. Levers "Special Administrator of the Estate of Ray E. Levers * * * insofar as the partnership assets in the firm of Levers Brothers is concerned" (R. 166). On October 10, 1941, Oran C. Dale was "appointed co-administrator with F. E. Levers to administer the partnership assets" of Ray Levers (R. 168). Thereafter in accordance with the require-

ments of Section 4 (g) of the Act, Forest E. Levers and Dale applied for and, on December 26, 1941, were issued a new wholesaler's basic permit (R. 170).

On November 5, 1943, respondent, District Supervisor, acting pursuant to Section 4 (e) of the Act, issued an order to show cause why the basic permit issued on December 26, 1941, should not be annulled (R. 146).

On November 15, 1943, Dale was discharged by the Probate Court as co-administrator in anticipation of his reporting on duty in the United States Army (R. 179).

On November 29, 1943, Forest E. Levers, as co-partner and Special Administrator, applied for a new wholesaler's basic permit and for an importer's basic permit (R. 171, 181). On December 18, 1943, pursuant to Section 4 (b), respondent issued a notice of contemplated denial of each of these two applications (R. 180, 191, 198).

The order to show cause why the wholesaler's basic permit should not be annulled charged that the permit had been secured by misrepresentation and concealment of material facts relating to the ownership or control of another corporation and to the ownership or control, in violation of Sections 5 (a) and 5 (b) of the Act, of outlets dispensing alcoholic beverages at retail (R. 146–148). The ownership or control of these retail outlets was also assigned as the basis of the charge, made

in each of the notices of contemplated denial, that the proposed business would not be maintained in conformity with Federal law (R. 180, 191, 198).

Petitioner requested a hearing on the order to show cause why the wholesaler's basic permit issued December 26, 1941, should not be annulled and on each of the notices of contemplated denial. The hearings in the three proceedings were consolidated. (R. 4–6.) Petitioner, while actively participating in the hearing, introduced no evidence in his behalf. After the hearing, the Hearing Officer made a consolidated report containing findings of fact that petitioner had made the misrepresentations charged (R. 377–421). These findings were adopted by the respondent, the District Supervisor, who then issued an order of annulment, an order denying the application for wholesalers basic permit, and an order denying the application for an importers basic permit (R. 421–427).

The controlling regulations (*infra*, pp. 21–23) permitted petitioner to apply to the District Supervisor for reconsideration of his order; the order was automatically stayed for the twenty days in which such an application could be filed and pending any such proceedings. The regulations also permitted appeal to the Deputy Commissioner of Internal Revenue after reconsideration by the Supervisor, but provided that: "Appeal to the [Deputy] Commissioner is not required."

Petitioner neither applied for reconsideration by the Supervisor nor appealed to the Deputy Commissioner. Instead he filed in the Circuit Court of Appeals a single petition praying that the orders of the respondent be set aside (R. 2).[1] That court, without considering the merits, dismissed the petition for failure to exhaust administrative remedies (R. 457–458). It stated that while appeal to the Deputy Commissioner "may no longer be a condition precedent to judicial review in view of" amendments to the regulations, the amendments "do not do away with the application for reconsideration, an administrative remedy not availed of by the petitioner" (R. 458).

DISCUSSION

I

The necessity of applying for rehearing before seeking judicial review

The court below has held that petitioner has not exhausted his administrative remedies, and hence cannot obtain judicial review, because he has not filed a petition for reconsideration before the District Supervisor. The ground of decision would appear to apply to all administrative bodies which permit, but do not require, applications for rehearing.

Outside of cases under the statute here involved, the federal administrative agencies have

[1] Respondent did not challenge the right of petitioner to file a single petition for review of the three orders.

not (at least since 1923 [2]) taken the position that application for rehearing is essential to judicial review of an administrative order in the absence of a statutory requirement to that effect.[3] Any such rigid requirement would in the vast majority of cases tend to prolong the administrative process and to increase the burden upon administrative agencies without compensating benefits. For most applications for rehearing, which raise no question not previously considered, waste the time both of the litigant and of the tribunal, whether it be judicial or administrative. Just as an order of a lower court is deemed final for purposes of appellate review despite the possibility of rehearing, so should the order of an administrative body.

This Court has indicated, in at least two cases, that the absence of an application for rehearing is not sufficient to invoke the doctrine requiring the exhaustion of administrative remedies. *United States* v. *Abilene & Southern Ry. Co.*, 265 U. S. 274, 281–282; *Prendergast* v. *New York Tel. Co.*, 262 U. S. 43, 48–49. The first of these cases suggests that in special circumstances (such as the possibility of an appeal from a division to the full

[2] In *United States* v. *Abilene & Southern Ry. Co.*, 265 U. S. 274, 281–282, discussed below.

[3] The Court of Appeals for the District of Columbia seems to have so held, as an alternative basis for decision, in *Mallory Coal Co.* v. *National Bituminous Coal Commission*, 99 F. 2d 399, 406–407, but the Government had advanced no such contention.

Interstate Commerce Commission) a court of equity may in the exercise of its discretion require a petition for rehearing, but it clearly holds that the requirement is not "jurisdictional", in the sense that the "long settled rule of judicial administration"[4] as to the exhaustion of administrative remedies automatically applies.

Of course an application for rehearing is a jurisdictional prerequisite to judicial review when the statute so provides, as does the Transportation Act of 1940[5] (54 Stat. 915–916, 49 U. S. C. § 17 (6)–(10)), the Federal Power Act (49 Stat. 860, 16 U. S. C. § 825*l*), and the Natural Gas Act (52 Stat. 831, 15 U. S. C. § 717r).

And when a statute contains the common requirement that no objection to the administrative order not urged before the administrative body shall be considered by the court,[6] an application for rehearing would seem to be necessary as to those points not urged prior to the original administrative decision.[7] We do not read such

[4] *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 50.

[5] This was a new provision in the Interstate Commerce Act. Its purpose and effect is to require appeals from divisions to the full Commission before seeking judicial review.

[6] E. g., in addition to Section 4 (h) of the Federal Alcohol Administration Act, quoted in the Appendix, *infra*, p. 20, the Securities Act of 1933 (48 Stat. 80, 15 U. S. C. § 77i); National Labor Relations Act (49 Stat. 454, 29 U. S. C. § 160 (e)).

[7] Thus when findings accompany the administrative decision, without any proposed findings having previously been issued, as is the practice under the regulations implementing

provisions, however, as meaning that contentions advanced prior to the issuance of an order must be renewed in an application for rehearing; although it is possible to construe the provision as meaning that the objection must run to an order already issued, such an interpretation does not comport with the obvious legislative purpose of the provision, and would have the unfortunate effects on the administrative process to which reference has been made (*supra*, p. 7).[8] When Congress has wished to have all objections raised in a petition for rehearing it has said so specifically, as in the Federal Power and Natural Gas Acts.[9]

A special problem arises when an order of a subordinate official or unit of the administrative agency has the force of law, but is subject to review, on application, by a superior official or body. *United States* v. *Abilene & Southern Ry. Co.*, 265 U. S. 274, indicates that in such cases a court may exercise its discretion as to whether to

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the Federal Alcohol Administration Act, the contention that the findings are inadequate can only be raised in an application for rehearing or reconsideration.

[8] The *Mallory Coal* case (*supra*, p. 7) appears to take a contrary position. See also *Peoria Braumeister Co.* v. *Yellowley*, 123 F. 2d 637, 640 (C. C. A. 7), discussed, *infra*, p. 11.

[9] See p. 8, *supra*. These statutes provide that:

"No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission *in the application for rehearing* unless there is reasonable ground for failure so to do."

The italicized phrase is not contained in the Federal Alcohol Administration Act or other similar statutes.

require an administrative appeal before taking jurisdiction.[10] Customarily, at least where an order is not immediately effective and in the absence of a special statute, regulation or policy to the contrary, it would seem that the courts should not review administrative action which has not been prosecuted as far as the highest administrative official. For in such cases the application for reconsideration is not being submitted to the tribunal which made the original decision.

II

Application of these principles to the regulations under the Federal Alcohol Administration Act

The application of these principles to the Federal Alcohol Administration Act raises two problems: (a) whether an application for reconsideration to the District Supervisor who issued the order is essential to judicial review, and (b) whether an appeal to the Deputy Commissioner[11] is required. These points must be discussed in the light of the administrative regulations and practice.

Prior to a revision effective June 4, 1942, the administrative regulations permitted applications

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10/ In the Abilene case there was, however, no administrative or statutory stay of the order such as there is here.

[11] The regulations define "Commissioner" as including the Deputy Commissioner in charge of the Alcohol Tax Unit (§ 182.6 (k), 7 Fed. Reg. 1865), and we shall refer to the latter as the "Commissioner."

for reconsideration to be filed with the District Supervisor within twenty days of the entry of his order, and an appeal to the Commissioner within ten days of the final order of the Supervisor. The Commissioner would set aside an order only if arbitrary or contrary to law or regulations. The operation of the order was automatically stayed during the twenty days (and an additional 10 days for appeals to the Commissioner) and the pendency of any further proceedings instituted during that period. While this regulation was in effect the Circuit Courts of Appeals for the Fifth and Seventh Circuits held that a person must exhaust these remedies, including appeal to the Commissioner, before asking judicial review. *Peoria Braumeister Co.* v. *Yellowley*, 123 F. 2d 637 (C. C. A. 7); *Leebern* v. *United States*, 124 F. 2d 505 (C. C. A. 5). Inasmuch as the appeal to the Commissioner brought the case to a higher official, we believe that these cases were correctly decided.

In 1942, with the deliberate object of making it unnecessary for a party to appeal to the Commissioner before going to court, the regulations were amended by inserting the sentence: "Appeal to the Commissioner is not required." 7 Fed. Reg. 1858, 1889–1890.[12] An appeal to the Commissioner was still permitted, however, on the same terms as before.

The Commissioner does not suggest that appeal to him from the District Supervisor is essential

[12] This revision contained other changes immaterial here.

to the exhaustion of administrative remedies. As we have seen, the regulation was amended by him in order to make that unnecessary, and if there be doubt as to whether the amendment compelled this result, his own interpretation of it, which has been communicated to and relied upon by persons subject to the Act, should be persuasive, and perhaps controlling.[13] There may be some question as to the power of an administrator to create an administrative remedy, and at the same time prevent extension to it of the principle of exhaustion. Here the Commissioner could have made the District Supervisor's decision final, and whether an administrative appeal should be allowed was for him to decide. Since the subject of the appropriate administrative procedure is within his control, it seems reasonable that he should be able to determine the essentiality of the administrative appeal.

This leaves to be determined the effect of the failure to apply for reconsideration before the District Supervisor. In this connection, the provisions of the regulations should be noted. They provide that the District Supervisor "may hear the application on a date and at a place to be

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[13] *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U. S. 134, 143n; *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 325; *American Tel. and Tel. Co.* v. *United States*, 299 U. S. 232, 242; *Morgan Stanley & Co.* v. *Securities & Exchange Commission*, 126 F. 2d 325 (C. C. A. 2).

fixed by him," and that "after hearing such application" he may either affirm or set aside his previous order. Although perhaps not required by its language, this regulation has been interpreted in practice as providing for a new oral argument, with a right to file briefs if desired, before the District Supervisor.

If an application for reconsideration were merely the equivalent of an ordinary petition for rehearing, in which a court or agency is requested to decide whether it will rehear a case,[14] we would conclude that the order was judicially reviewable despite the absence of an application and that the decision below was incorrect. See Point I, *supra*, pp. 6–10. But the application here performs a more important function. For under the regulations, as administratively interpreted, it enables a party to reargue his case fully both orally and in writing and also automatically stays the operation of the order. These factors would seem to differentiate an application under these regulations from the ordinary petition for rehearing, which may be given only slight consideration unless a new point is raised. The applicant's position is more closely akin to that of a person whose petition for rehearing has been granted and the case scheduled for reargument. In that situation, an

[14] "It has been almost a rule of necessity that rehearings were not matters of right, but were pleas to discretion." *Interstate Commerce Commission* v. *City of Jersey City*, 322 U. S. 503, 514.

administrative order could not be reviewed until after the application had been disposed of. *Southland Industries* v. *Federal Communications Commission,* 99 F. 2d 117 (App. D. C.), and cases cited.

The application for reconsideration under the regulations here involved is not a mere formal request to be heard anew. It gives the applicant a new opportunity to present his contentions, and leads to a new order affirming or setting aside the original order. And the very fact that the administrators of this statute do not treat the application as perfunctory, but give it substantial consideration before letting the original order become effective, indicates that in their view it is a significant part of the administrative proceeding. It is thus not unreasonable to require a person aggrieved by an order of the District Supervisor to avail himself of this procedure before seeking judicial relief.

CONCLUSION

To the extent that the decision below may be regarded as establishing a general principle of administrative law as to the need for applying for rehearing before seeking judicial relief, it raises an important question and, in our view, is incorrect. The decision is supportable, however, if limited to proceedings under the regulations now in force under the Federal Alcohol Administration Act. Whether a rehearing must be sought under

those regulations probably does not present a question warranting review by this Court. The important consideration is that parties know whether they must apply for reconsideration, and the decision below, if not reviewed and reversed, will in itself induce them to pursue that course.

Respectfully submitted.

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Acting Solicitor General,
ROBERT L. STERN,
Special Assistant to the Attorney General.

APRIL, 1945.

APPENDIX

A. The Act

The Federal Alcohol Administration Act, 49 Stat. 977 (27 U. S. C. 201) provides in part as follows:

> Sec. 2 * * * (d) The Administrator is authorized and directed to prescribe such rules and regulations as may be necessary to carry out his powers and duties. All rules and regulations prescribed by the Administrator shall be subject to the approval of the Secretary of the Treasury.
>
> Sec. 3 * * * (a) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—
>
> (1) to engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or
>
> (2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported.
>
> This subsection shall take effect sixty days after the date upon which the Administrator first appointed under this Act takes office.
>
> * * * * *
>
> (c) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of purchasing for resale at wholesale distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to receive or to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

* * * * * *

SEC. 4. (a) The following persons shall, on application therefor, be entitled to a basic permit:

(1) Any person who, on May 25, 1935, held a basic permit as distiller, rectifier, wine producer, or importer issued by an agency of the Federal Government.

(2) Any other person unless the Administrator finds (A) that such person (or in case of a corporation, any of its officers, directors, or principal stockholders) has, within five years prior to date of application, been convicted of a felony under Federal or State law or has, within three years prior to date of application, been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof; or (B) that such person is, by reason of his business experience, financial standing, or trade connections, not likely to commence operations within a reasonable period or to maintain such operations in conformity with Federal law; or (C) that the operations proposed to be conducted by such person are in violation of the law of the State in which they are to be conducted.

(b) If upon examination of any application for a basic permit the Administrator has reason to believe that the applicant is not entitled to such permit, he shall notify the applicant thereof and, upon request by

the applicant, afford him due notice and opportunity for hearing on the application. If the Administrator, after affording such notice and opportunity for hearing, finds that the applicant is not entitled to a basic permit hereunder, he shall by order deny the application stating the findings which are the basis for his order.

* * * * *

(d) A basic permit shall be conditioned upon compliance with the requirements of section 5 (relating to unfair competition and unlawful practices) and of section 6 (relating to bulk sales and bottling), with the twenty-first amendment and laws relating to the enforcement thereof, and with all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto.

(e) A basic permit shall by order of the Administrator, after due notice and opportunity for hearing to the permittee, (1) be revoked, or suspended for such period as the Administrator deems appropriate, if the Administrator finds that the permittee has willfully violated any of the conditions thereof, provided that for a first violation of the conditions thereof the permit shall be subject to suspension only; or (2) be revoked if the Administrator finds that the permittee has not engaged in the operations authorized by the permit for a period of more than two years; or (3) be annulled if the Administrator finds that the permit was procured through fraud, or misrepresentation, or concealment of material fact. The order shall state the findings which are the basis for the order.

* * * * *

(g) A basic permit shall continue in effect until suspended, revoked, or annulled as provided herein, or voluntarily surrendered; except that (1) if leased, sold or otherwise voluntarily transferred, the permit shall be automatically terminated thereupon, and (2) if transferred by operation of law or if actual or legal control of the permittee is acquired, directly or indirectly, whether by stock-ownership or in any other manner, by any person, then such permit shall be automatically terminated at the expiration of thirty days thereafter: *Provided,* That if within such thirty-day period application for a new basic permit is made by the transferee or permittee, respectively, then the outstanding basic permit shall continue in effect until such application is finally acted on by the Administrator.

(h) An appeal may be taken by the permittee or applicant for a permit from any order of the Administrator denying an application for, or suspending, revoking, or annulling, a basic permit. Such appeal shall be taken by filing, in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, within sixty days after the entry of such order, a written petition praying that the order of the Administrator be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon the Administrator, or upon any officer designated by him for that purpose, and thereupon the Administrator shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon

the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Administrator shall be considered by the court unless such objection shall have been urged before the Administrator or unless there were reasonable grounds for failure so to do. The finding of the Administrator as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence to be taken before the Administrator and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Administrator may modify his findings as to the facts by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Administrator shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection

shall, unless specifically ordered by the court to the contrary, operate as a stay of the Administrator's order.

B. The Regulations

The pertinent regulations are Sections 182.255 and 182.257 of the regulations relating to industrial alcohol (7 Fed. Reg. 1858, 1889–1890, 1890, March 12, 1942) which were made applicable to orders denying, suspending, revoking or annulling basic permits entered under the authority of Sections 4 (b) and 4 (e) of the Federal Alcohol Administration Act (Treasury Decision 4982, 5 Fed. Reg. 2549–2550, July 13, 1940). They read as follows:

> Sec. 182.255. *Reconsideration of order revoking permit.*—(*a*) *Time for filing application.*—Within 20 days after an order is made by the Commissioner or district supervisor revoking a basic permit, the permittee may file an application with such Commissioner or district supervisor, for a reconsideration of such order, on one or more of the following grounds:
>
> (1) The order is contrary to law; or
>
> (2) Is not supported by the evidence; or
>
> (3) Because of newly discovered evidence which the permittee, with due diligence, was unable to produce at the hearing.
>
> If the application is based on grounds (1) or (2), the permittee shall specify therein, by reference to the record, in what respects the order is contrary to law or is not supported by the evidence, as the case may be. If the application is based on ground (3), the permittee shall summarize therein the newly discovered evidence and set forth

why he was unable to produce such evidence prior to the closing of the record.

(*b*) *Time of hearing.*—The Commissioner or district supervisor, with whom such application is filed, may hear the application on a date and at a place to be fixed by him. The Commissioner or district supervisor, as the case may be, after hearing such application, may either affirm the order of revocation previously made, or may vacate and set aside such order and dismiss the proceedings or order a new hearing of the evidence before a designated hearing officer.

(*c*) *Permit privileges.*—During the period above provided for filing application for reconsideration, and until final order is duly made after such reconsideration, if such application is filed within the time provided therefor, the permit involved shall continue in force and effect, except as to restrictions on withdrawals or transportation as may be ordered by the Commissioner or district supervisor, as provided in section 182.245.

SEC. 182.257. *Appeal to the Commissioner.*—Appeal to the Commissioner is not required. However, the Commissioner may, in his discretion, in order to insure uniformity of administrative action, entertain an appeal, after review and reconsideration as provided in section 182.255, from an order of revocation of a basic permit by a district supervisor, if filed with the Commissioner within 10 days of the date of the final order.

(*a*) *Petition.*—The petition for review must set forth facts tending to show action of an arbitrary nature, or of a proceeding and action contrary to law or regulations. No objection to the final order of the dis-

trict supervisor will be considered by the Commissioner unless such objection was urged before the district supervisor in the permittee's application for reconsideration, or unless reasonable grounds for failure to urge such objections are set forth in the petition for review.

(*b*) *Permit privileges.*—If such request is filed within the required time, the permit involved shall continue in force and effect until the final order by the Commissioner, except as to such restrictions upon withdrawals or transportation as may be imposed by the district supervisor, as provided in section 182.245.

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